

Appellant underwent surgery for left peroneal tenosynovectomy and repair of peroneus brevis tendon tear on January 12, 2004 and November 14, 2005. The procedures were performed by Dr. Luke S. Loveys, Board-certified in orthopedic surgery.

On June 20, 2007 appellant filed a Form CA-7 claim for a schedule award based on loss of use of his left lower extremity.

In a report dated May 10, 2007, Dr. Loveys found that appellant had a 45 percent permanent impairment of the left foot stemming from his March 11, 2002 employment injury. He relied on range of motion testing which indicated 6 degree dorsiflexion and 37 degree plantar flexion. Dr. Loveys also noted marked restriction to both subtalar inversion and eversion. Relying on the guidelines of New York State's Workers' Compensation Board, he rated a 10 percent loss of use with regard to mild loss of dorsiflexion, 25 percent loss secondary to marked defect in both subtalar inversion and eversion as well as an additional 10 percent secondary to disfunction of the sural nerve.

By letter dated July 10, 2007, the Office asked Dr. Loveys to submit an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*) (fifth edition). In a report dated September 5, 2007, Dr. Loveys found that appellant had a 26 percent impairment of the left lower extremity. He calculated a loss of range of motion of 6 degree dorsiflexion and 40 degree plantar flexion in the left ankle. Dr. Loveys stated that appellant also had decreased sensation of the sural nerve and a significant loss in subtalar motion.

In a report dated October 23, 2007, an Office medical adviser reviewed Dr. Loveys' findings and conclusions and applied them to the applicable figures and tables of the A.M.A., *Guides*. He determined that appellant had a 7 percent permanent impairment of the left foot for loss of dorsiflexion pursuant to Table 17-11 at page 537 of the A.M.A., *Guides*; a 10 percent permanent impairment of the left foot based on loss of eversion and inversion pursuant to Table 17-12 at page 537 the A.M.A., *Guides*; and a 2 percent impairment for decreased sensation along the sural nerve, distally pursuant to Table 17-37 at page 552 of the A.M.A., *Guides*, for a total 18 percent combined impairment of the left lower extremity under the A.M.A., *Guides*.

On December 17, 2007 the Office granted appellant a schedule award for an 18 percent permanent impairment of the left lower extremity for the period May 10, 2007 to May 6, 2008, for a total of 51.84 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office medical adviser determined that appellant had an 18 percent permanent impairment of the left lower extremity by adopting Dr. Loveys' findings regarding decreased range of motion and decreased sensation of the left ankle. While Dr. Loveys evaluated appellant's impairment pursuant to New York workers' compensation guidelines, the Office medical adviser properly evaluated Dr. Loveys' findings pursuant to the A.M.A., *Guides*, as the A.M.A., *Guides* are the single set of tables used by the federal employees' compensation program.⁴

The Office medical adviser therefore properly found a 7 percent impairment based on loss of dorsiflexion was derived by using Table 17-11, which yields a moderate impairment between 6 and 21 percent for loss of dorsiflexion.⁵ As Dr. Loveys measured a six percent loss of dorsiflexion, the Office medical adviser properly found that appellant had a seven percent left lower extremity impairment under this formula. In addition, Dr. Loveys stated that appellant had "marked" and "significant" restriction to both subtalar inversion and eversion, which translates to a moderate or severe lower extremity impairment under Table 17-12. Based on these findings, the Office medical adviser rated a 10 percent impairment pursuant for loss of inversion and eversion pursuant to Table 17-12.⁶ He then accorded appellant an additional 2 percent impairment for decreased sensation along the sural nerve pursuant to Table 17-37 at page 552 of the A.M.A., *Guides*, for a total 18 percent combined impairment of the left lower extremity under the A.M.A., *Guides*. The Office medical adviser properly combined, utilizing the Combined Tables Chart of the A.M.A., *Guides*,⁷ rather than added, the sensory and motor impairments as the A.M.A., *Guides* require that when both sensory and motor functions are involved the impairment values derived for each are combined.⁸ This finding was proper and in conformance with the protocols of the A.M.A., *Guides*.

The Board finds that the Office's December 17, 2007 decision granting appellant a schedule award for an 18 percent left lower extremity impairment was properly based on the available evidence of record and calculated in accordance with the applicable tables of the A.M.A., *Guides*. As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to

³ 20 C.F.R. § 10.404.

⁴ See *Rose V. Ford*, 55 ECAB 449 (2004).

⁵ A.M.A., *Guides* 537.

⁶ The Office medical adviser actually granted appellant greater than the maximum recommended impairment under Table 17-12, which is seven percent. *Id.*

⁷ A.M.A., *Guides* 604.

⁸ *Kimberly M. Held*, 56 ECAB 670 (2005).

more than the 18 percent impairment of the right lower extremity already awarded. The Board will affirm the Office's December 17, 2007 decision.

CONCLUSION

The Board finds that appellant has no more than an 18 percent additional impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 15, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board